

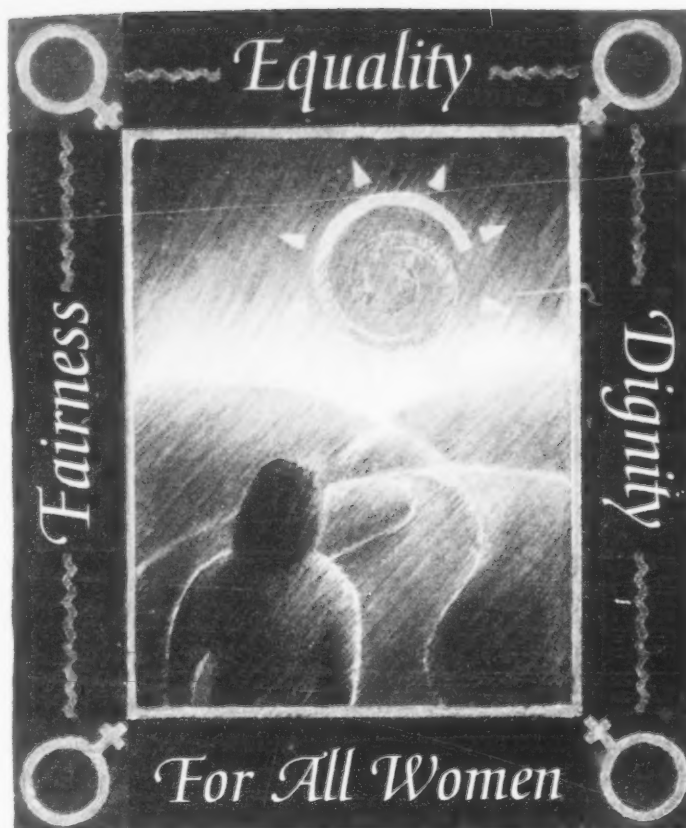


Nova Scotia
Advisory Council on
The Status of Women

Conseil consultatif sur la
condition féminine de la
Nouvelle-Écosse

An agency of the Province of Nova Scotia

HOURS OF WORK, OVERTIME AND
LABOUR STANDARDS IN
NOVA SCOTIA:
A BRIEF TO THE NOVA SCOTIA
DEPARTMENT OF ENVIRONMENT AND
LABOUR



*The
Journey Continues ...*



Printed on papers that
contain recycled fibre

**HOURS OF WORK, OVERTIME AND
LABOUR STANDARDS IN
NOVA SCOTIA:
A BRIEF TO THE NOVA SCOTIA
DEPARTMENT OF ENVIRONMENT AND
LABOUR**



**Nova Scotia Advisory Council
on the Status of Women**

PO Box 745 Halifax NS B3J 2T3

Phone: 902-424-8662 / 1-800-565-8662

Fax: 902-424-0573

e-mail: nsacsw@gov.ns.ca

Internet: <http://www.gov.ns.ca/staw>



Advancing equality, fairness & dignity for all women in Nova Scotia

The **Nova Scotia Advisory Council on the Status of Women** was established by provincial statute in 1977. The Council's mandate under the *Advisory Council on the Status of Women Act* is to advise the Minister Responsible for the Status of Women and to bring forward the concerns of women in Nova Scotia.

The Council's work touches on all areas of women's lives, including:

- family life
- economic security
- legal rights
- sexuality
- health
- education
- paid & unpaid work
- violence

Council works toward the inclusion of women who face barriers to full equality because of race, age, language, class, ethnicity, religion, disability, sexual orientation, or various forms of family status.

We are committed to voicing women's concerns to government and the community through policy research, information services, and community outreach.

**HOURS OF WORK, OVERTIME AND LABOUR STANDARDS IN NOVA SCOTIA:
A BRIEF TO THE NOVA SCOTIA
DEPARTMENT OF ENVIRONMENT AND LABOUR**

Introduction and Background

The Nova Scotia Advisory Council on the Status of Women is pleased to respond to the review of averaging provisions in the Labour Standards legislation. We do so in the context of our mandate to provide input and advice to government on issues of concern to women and of two of our major goals--to foster the economic security of women and their health and well-being.

The Review and Changes to Nova Scotia Labour Standards

In the Fall of 2003, the Nova Scotia government introduced changes to the Labour Standards. These changes brought Nova Scotia's Labour Standards Code more in line with those in other provinces. The changes included overtime at time and a half regular pay, three weeks vacation after eight years, family leave, and an annual independent review of the minimum wage.

On the issue of overtime, however, the law made exceptions for some occupations and industries where irregular working hours are routine. These included professionals, managers, logging and forestry workers and others. Later in the fall, revisions to the legislation were developed to enable the averaging of overtime for construction, property maintenance, and transport industry workers, with overtime for construction works payable only after an average of 55 hours of work over a two week period, and after an average of 48 hours of work over a two week period for transportation workers. The averaging mechanism, therefore, allowed construction and property maintenance workers to work up to 110 hours over a two week period (an average of 55 hours a week) before they were eligible to be paid overtime. Transport workers would be paid overtime if they worked over 96 hours in a two week period (48 hours a week).

The rationale for averaging of overtime hours for construction and transport workers is to allow this industry the flexibility to deal with difficult weather conditions (Department of Environment and Labour Press Release, March 26, 2004). In March, the government announced in a press release that it was conducting a review of averaging, indicating that it would assess the potential impact of averaging on all workers and employers. The announcement said it would examine provisions for averaging in other provinces, review best practices, and receive feedback and comments from the public, in particular employees and employers.

Under certain conditions and with adequate protections, averaging of hours can be positive for some employees; for example it can enable workers more flexibility to balance work and family life through compressed work weeks or modified working hours. Under other conditions (if adequate protections are not in place) and for vulnerable workers in what many researchers now refer to as 'contingent' or 'precarious' jobs or low paid employment, averaging of hours can have negative consequences for both the employee and for families.

With the growth of precarious employment and contingent work, increasing numbers of women are likely to work in jobs where they have little power to choose their hours of work or for employers who find averaging attractive because they can avoid paying overtime. Given that Labour Standards legislation and regulations provides a minimum standard for working conditions below which no-one should fall, it is these vulnerable and low paid workers who will likely be most affected by any changes in the standards. Allowing averaging of hours across the board in Nova Scotia Labour Standards, therefore, will undoubtedly have an impact on female employees. It is the potential impact on these female workers that we pay most attention to addressing below.

It should also be recognized that in situations where averaging of hours entails some longer work days (which it usually does), occupational health and safety concerns may also be a factor. It is particularly important that the occupational and health and safety of workers be taken into account where long hours of work are concerned. In addition, however, the impact of long hours on the occupational health and safety of

employees in certain sectors and industries such as construction, transportation or healthcare may also have detrimental effects on public safety. It is also important, therefore, to take this into account in considering changes in Labour Standards legislation.

Finally, it is important to recognize that most Nova Scotians work in small businesses where there are fewer than ten employees. Revisions to Labour Standards legislation, therefore, will also need to take this into account. Application of Labour Standards legislation, therefore, should strike a balance between providing adequate protection for workers in small establishments while taking care not to impose reporting or regulatory requirements on small business employers which are onerous.

I Variations in Working Time, Averaging and Labour Standards

Many people in Canada work in jobs that have compressed work weeks, modified work schedules or flexible work hours. These arrangements are usually pre-determined, fixed cycles of work which repeat over a specified number of days or weeks. Under these arrangements, however, the number of hours worked in a cycle do not average out at more than the standard or normal hours of work established by legislation. These arrangement also usually require the prior approval of a Director of Labour Standards and agreement between the employer and employees.

Averaging hours for the purposes of overtime is also allowed in some Labour Standards legislation and is affected by other provisions such as the maximum hours of work and overtime pay as well as exclusions. It is important to note that averaging or variations in hours of work for the purposes of overtime is somewhat different from that for compressed or modified work weeks because overtime is usually not fixed according to a pre-determined cycle and it is usually based on an employer's human resource needs in a particularly busy period or to complete a particular job rather than the preferences of employees.

Averaging of hours in other regions and provinces

In a study of Labour Standard legislation conducted by HRDC in 2001, compressed work weeks (workweeks of less than five days), modified work schedules or flexible work schedules (cycles of work that repeat over a stipulated period—usually for not more than 8 weeks) were specifically allowed for in Alberta, B.C., Manitoba, Ontario, Saskatchewan and the Yukon.¹

According to the study, averaging for the purposes of compressed work weeks could be established in other provinces (including Nova Scotia) which do not stipulate a standard daily or weekly number of hours. Section 62 of the Nova Scotia Code also allows for a variation of hours of work within a work week where this is already the law, has been the custom, or where there is an agreement between the employer and employees.² Averaging of overtime hours is also allowed under certain conditions and for certain industries and sectors in most provinces and territories.

According to the Department of the Environment and Labour backgrounder *Averaging Provision Review*, some industry sectors commonly apply some form of averaging of hours where it is allowed under provincial legislation. These include fish plants, retail, health care, home care and group homes, ski operations, food and service industry, seasonal workers, mining, security, and oil and gas. While the application of averaging and provisions for averaging in legislation vary across regions, the averaging period does not generally go beyond a maximum of four consecutive weeks.

Averaging provisions in Labour Standards legislation usually require that there be an averaging agreement between the employer and employees. An averaging agreement stipulates that hours can be averaged over a certain number of weeks (usually between 2 and 4) based on the standard and maximum hours of work in the legislation.

¹Human Resources Development Canada, Labour Branch, *Hours of Work and Overtime*, December 19, 2001.

²This section of the Code was not amended in the changes to the Nova Scotia Labour Standards legislation in the fall of 2003 and should probably be re-examined under this review.

Generally, the terms of averaging must be agreed to in writing by employees. The agreement can be between the employer and individual employees or by a group vote or secret ballot. In the latter case, if approved, the agreement applies to all employees in the workplace. These agreements must also state the benefits of the agreement to the employee; have an expiry date, and can usually be revoked in writing by either employers or employees.

Averaging agreements also sometimes require the approval of a Director of Labour Standards. In jurisdictions that do not require prior approval from Labour Standards, the legislation specifies the maximum number of hours an employee may work in a week and the rate of pay for overtime.

Hours of work, averaging and overtime pay

Averaging agreements, industry exclusions and standard and maximum hours of work provisions in Labour Standards affect how overtime is calculated for the purposes of overtime pay or lieu time, as well as the number of hours employees may be required to work in a given period. How overtime is treated in Labour Standards legislation, therefore, is not only related to any averaging provisions and industry exceptions which might exist, but to provisions for standard and maximum hours of work, and overtime pay.

The standard number of hours of work defines the "normal" working day or week for full time employees. Employees are usually eligible for overtime or time off in lieu of overtime if they work over the standard number of hours. The survey of provincial labour standards legislation conducted by the Labour Branch of HRDC in December 2001, showed that in most provinces the standard hours of work are 8 hours a day and between 40 and 44 hours a week (Alberta, B.C., Manitoba, Newfoundland, NWT and Nunavut, Ontario Quebec, Saskatchewan and the Yukon). New Brunswick's legislation did not include a standard number of hours of work. Nova Scotia and PEI, however, still provide for standard work hours of 48 hours a week.

Work beyond the standard number of hours in a day or week, unless there is an averaging agreement, is eligible for overtime pay. The conditions for such agreements are also usually stipulated in Labour Standards legislation. These conditions and the formulas for overtime pay also vary by province. According to the 2001 HRDC study, at one end of the spectrum B.C., Manitoba, Saskatchewan, Yukon, NWT and Nunavut stipulate that overtime should be paid at 1.5 times the regular rate after 8 hours of work in a day or 40 hours a week (B.C. also stipulates double the regular rate after 11 hours a day or 48 hours a week). Newfoundland, New Brunswick and PEI stipulated overtime after 40 hours, 44 hours, and 48 respectively, but only at 1.5 times the minimum wage. Nova Scotia also provides for overtime only after 48 hours of work, but in December 2003, changed the rate of overtime pay from 1.5 times minimum wage to 1.5 the regular rate of pay.

While overtime provisions influence what employees are paid for hours worked over the standard, the amount of overtime employees can be required to work or are allowed work over the standard is governed by maximum hours provisions in Labour Standards legislation. Employers cannot require employees to work beyond the maximum number of hours in a day or a week unless there is an averaging agreement between the employer and employee(s), or specific exceptions are made in the legislation for certain industries.

Across Canada there is more variation in the maximum hours of work than in standard hours. Maximum hours range from 8 hours a day or 40 hours in a week (B.C., Manitoba); 44 hours in a week (Saskatchewan; Ontario); 10 hours in a day or 60 hours in a week (NWT) and Nunavut); 12 hours a day within a 44 hour week (Alberta); 48 hours in a week (N.S.); 16 hours in a 24 hour period (Newfoundland). Some provinces such as Quebec, PEI and Yukon do not stipulate maximum hours. In 2002, Ontario passed legislation providing for a 60 hour maximum work week, but the Ontario government has recently announced its intention to rescind this legislation and is now proposing a maximum work week of 48 hours.

Labour Standards legislation in the various provinces and territories also allows for exclusions from hours of work and overtime pay provisions in the Code. In most provinces these exclusions can be quite extensive. According to the HRDC survey cited above, the most common are students, professionals, ambulance drivers and attendants, domestics, fishermen, farm workers, construction workers and managerial staff. In Nova Scotia exclusions also affect transportation workers, and real estate and outside sales persons working on commission.

In what some commentators call a "just in time" economy, averaging hours, especially for the purposes of overtime can be of particular benefit to employers who rely on a contingent labour force to fill human resource needs "when required". If the use of averaging was to become widespread, however, low waged workers and those in precarious employment (especially those who are not unionized) could be subject to human resource management practices that make them vulnerable to exploitation unless there are adequate protections through Labour Standards.

II Women as Vulnerable Workers

Many women are particularly vulnerable to working in low waged sectors of the labour market which increasingly rely on a contingent labour force and non-standard employment (i.e., part time, contract, casual, temporary or term employment).

Women are concentrated in certain low wage occupations such as clerical, sales, or service jobs and in certain sectors of the economy such as the retail and service sectors where wages are often below average and working conditions may not be the best. More women than men also work in minimum wage jobs. In 2003, 6% of female employees (compared with 4.5% of male employees) worked for the minimum wage, mostly in the retail or service sectors.³ Far more women, however, work in jobs that are

³ *Occupational Distribution by Gender, Nova Scotia, 2002*. Statistics Canada, Labour Force Survey.

only marginally above minimum wage. In 2002, in Nova Scotia, for example, 37% of women workers (compared with 24% of male workers) earned less than \$10 an hour.⁴

In addition, in the context of a perceived need for increased flexibility in the labour market, there has been a growth in "contingent" or "precarious employment" in Canada (i.e., temporary, part-time, seasonal, casual or contract positions). Researchers note that many of these jobs are non-unionized and lack the same kind of protections and benefits of regular full-time jobs. Many of these jobs are in the growing service sector of the economy where women are most likely to be employed or in the retail sector. It is not surprising, therefore, that researchers conclude that although women accounted for forty-six percent of the Canadian labour force in 2001, they constituted sixty-three percent of those in precarious employment. (Cranford, Vosko and Zukewick, 2003).

Increased flexibility in the labour market and the trend towards what some have called a "just in time" economy also means that some workers are working longer hours. Recent research by GPI Atlantic, for example, found that the incidence of long hours of work has increased in Canada since 1976, with one-third of full-time employees, working 41 hours or more in 2001. In Nova Scotia, the proportion of full-time employees working 50 hours or more increased from 12.7% in 1976 to 16.4% in 2001. In the same time period the proportion of employed women in Nova Scotia working more than 41 hours a week jumped from 12.2% to 20.3%. The same study also found that the proportion of workers with multiple jobs has also increased significantly.⁵

The GPI *Working Time* study cited above also noted that Nova Scotia parents were working 141 additional hours, or 18 more 8-hour days for pay in 2000 than they did in

⁴ GPI Atlantic, *Women's Health in Atlantic Canada*, January 2003, p.16.

⁵ GPI Atlantic, *Working Time and the Future of Work in Canada: A Nova Scotia GPI Case Study*, Executive Summary, p.6; p.14.

1981.⁶ According to an earlier GPI Atlantic on women's health, women in particular are reporting undue time stress from longer hours combining paid and unpaid work.⁷

In employment situations where the record of adherence to Labour Standards is not good or where employers want to take advantage of averaging to avoid overtime, averaging of hours could mean working extremely long hours for a few weeks, followed by reduced hours, or in some circumstances, lay-off. Although in most provinces workers must agree to averaging of overtime, in reality, unless there is adequate protection in Labour Standards, non-unionized workers in low paid jobs often have very little control over the situation. Under a four week averaging arrangement, for example, workers could also be required to work over the maximum number of hours in the first three weeks but be subject to lay-off in the fourth week, thus enabling the employer to avoid or lower the payout of overtime. For parents, especially mothers, such long hours of work and unpredictable schedules could also create child care problems and undue stress.

This kind of abuse of the intent of averaging is more likely to occur in areas with high unemployment or during periods of high unemployment when workers can exercise fewer options related to job choice and working conditions. Even in periods of low unemployment, however, married women and women with families are less likely to be able to exercise the same kind of job options as men in similar circumstances. This is because of their relatively disadvantaged position in the labour market, their family responsibilities, and the fact that their labour market mobility is limited by family decisions about place of residence.

Besides the need for flexible labour, advocates of averaging often claim that it can help parents and other caregivers to better balance work and family life. This may be the case under certain circumstances, for example, where averaging takes the form of a repeated cycle of hours over a limited time period (as in a compressed work week or

⁶ GPI Atlantic, *Working Time*, p.11.

⁷ GPI Atlantic, *Women's Health in Atlantic Canada*, 2003, op.cit.

modified working hours) and where there are adequate protections in Labour Standards and the arrangement is clearly a preference of the majority of employees. If these conditions are not present, however, averaging (especially averaging of overtime) can create more problems for women in the area of work-life balance than it can potentially solve. By adding numerous hours of paid work to the unpaid work that many women already do in the home, long hours of overtime can create increased stress, affect women's health and be deleterious to family life.

Additionally, women are extremely under-represented in non-traditional jobs in Nova Scotia. One reason for this is that the unpredictable or long hours of work in some of these jobs are too onerous for women who want to combine paid employment with raising a family. The averaging mechanism developed last fall which allows construction and road building workers to work up to 55 hours a week averaged over two weeks, for example, is likely to continue to discourage women from entering jobs in these areas. For men with young families, of course, these long hours also mean that they are unavailable to their families or to share the load of domestic labour and child care.

Under these circumstances, therefore, we recommend that averaging of hours for the purposes of compressed work weeks, modified hours, and especially for overtime be permitted, but only in the context of more protective provisions in the Labour Code relating to standard and maximum hours, in how averaging agreements are made, and of a stronger role for the Director of Labour Standards in terms of information and education, monitoring, and enforcement.

III Recommendations

1. The current review of averaging should bear in mind issues related to contingent and precarious employment, increased hours of work, time stress, and the possible negative effects on balancing paid work with family life of averaging excessive overtime hours.

2. Nova Scotia should consider establishing a standard work day of 8 hours or a work week or 40 hours to discourage an over-reliance on overtime to meet human resource needs.
3. Whether it is for the purposes of establishing a compressed work week, modified work hours, flexible hours or for averaging overtime beyond a two week period, workers must have the right to choose whether they work over the maximum hours in a week and the period over which these hours are to be averaged.
4. To avoid coercion of vulnerable employees, such choices should be based on averaging agreements between the employer and a majority of employees in the establishment.
5. Agreements on averaging hours of work beyond a two week period should be approved by the Director of Labour Standards and take into account certain criteria such as the purpose of averaging, whether the majority of employees have agreed and the employer's labour standards compliance history and occupational health and safety issues.
6. Approved averaging cycles for the purposes of establishing a compressed work week or a modified work schedule should not exceed four weeks. Agreements, subject to renewal, should be reviewed by Labour Standards after three years. If a majority of employees in an establishment wish to revoke such an agreement to average hours, they should have the right to do so after providing four weeks written notice to the employer and the Director of Labour Standards.
7. Approval of the Director of Labour Standards should be required for agreements which average overtime beyond a period of two weeks and exceed the maximum number of hours of work in the Labour Code. If a majority of employees in an establishment wish to revoke such an agreement, they should have the right to do so after providing two weeks written notice to the employer and the Director of Labour Standards.

8. Nova Scotia should provide more accessible education and information about Labour Standards to employers and employees, especially for those vulnerable to coercion or being forced out of work.
9. The Director of Labour Standards should conduct work-place spot checks to ensure compliance with the Labour Standards Code on overtime averaging.